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NOTICE OF ALLOWANCE AND FEE(S) DUE

24273

7590

10/09/2008

MOTOROLA, INC
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG, IL 60196

EXAMINER

FAULK, DEVONA E

ART UNIT

PAPER NUMBER

2615

DATE MAILED: 10/09/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,213

09/11/2003

Darren T. Sapache

CM0632RJ

6551

TITLE OF INVENTION: METHOD AND APPARATUS FOR MAINTAINING AUDIO LEVEL PREFERENCES IN A COMMUNICATION DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	01/09/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE** OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

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Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

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24273 7590 10/09/2008
MOTOROLA, INC
1303 EAST ALGONQUIN ROAD
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SCHAUMBURG, IL 60196

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I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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nonprovisional	NO	\$1510	\$300	\$0	\$1810	01/09/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
FAULK, DEVONAE	2615	381-104000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2
 3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
☐ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

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This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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10/660,213	09/11/2003	Darren T. Sapshe	CM06328J	6551
24273	7590	10/09/2008	EXAMINER	
MOTOROLA, INC 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			FAULK, DEVONA E	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 10/09/2008

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 792 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 792 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability**Application No.**

10/660,213

Applicant(s)

SAPASHE ET AL.

Examiner

DEVONA E. FAULK

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 7/22/08.
2. ☒ The allowed claim(s) is/are 1-3,5.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed with the pre-appeal brief request, filed 7/22/08, with respect to claims 1-3 and 5 have been fully considered and are persuasive. The rejections of claims 1-3 and 5 has been withdrawn.
2. The applicant agreed to an examiner's amendment to place the claims in allowable form.
3. Claim 4 is cancelled.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Barbara R. Doutre (Reg. No. 39,505) on 9/24/08.

5. The claims are to be amended as follows:
6. Claim 1 should be amended to recite:
 1. A method for controlling volume in a two-way communication device, comprising: detecting a change in manual volume setting; measuring current background audio level; determining a relationship between the current background audio level and the volume setting; establishing the relationship as a desired volume level to be maintained; sensing a subsequent change in the manual volume setting; monitoring subsequent

background audio level ~~alone by switchably~~ engaging a microphone of the two-way radio only when ~~in response to~~ the subsequent change in the manual volume setting is detected; comparing the current background level to the subsequent background level; determining whether a change in background level occurred; and automatically adjusting volume of a speaker of the two-way radio based on the relationship.

Claim 2 should be amended to recite the following:

2. A method for controlling volume in a communication device, comprising: manually setting a volume control for an initial background audio level; establishing the set volume as the preferred volume setting for that initial background audio level, thereby establishing a user-preferred relationship; monitoring ~~only~~ subsequent background audio levels by engaging ~~switching-in~~ a microphone only when a change in manual volume control setting occurs; and maintaining an audio level for the subsequent background audio levels based on the preferred volume setting for the initial background audio level.

Claim 3 should be amended to recite the following:

3. A communication device, including: a controller for monitoring background audio levels;
a manual volume control coupled to the controller, the manual volume control setting a

volume level as a user preference for a current background audio level;
a microphone ~~switchably~~ coupled to the controller for monitoring ~~only~~ background noise levels only when ~~in response to~~ changes in the manual volume control are detected;
and
the controller providing automatic adjustment of the volume level based on the user preference for the current background audio level in response to any change in the monitored background audio level.

Claim 5 should be amended to recite the following:

5. A communication device, comprising:

a transceiver portion for transmitting and receiving RF signals for two-way radio communication;
a controller coupled to the transceiver portion, the controller having an intelligent automatic volume control (AVC) for determining when to sample an audio environment;
a manual volume control coupled to the controller, the manual volume control establishing a user selected preferred volume level for an initial background audio level;
a microphone coupled to the controller via a switch, said AVC engaging the microphone to sample ~~the microphone sampling~~ subsequent background audio levels only when ~~alone in response to~~ a subsequent change to the manual volume control being is sensed by the intelligent AVC ~~and the intelligent AVC engaging the switch~~; and
a speaker coupled to the controller, the speaker having a volume level automatically adjusted by the controller based on the initial background audio level, the sampled

subsequent background audio level and the user preferred volume level for the initial background audio level thereby maintaining a user established relationship between the volume heard at the speaker and the sampled subsequent background.

7. Claims 1-3 and 5 are allowed.

The following is an examiner's statement of reasons for allowance: Regarding claims 1-3 and 5, prior art Helms (US 5,666,426) discloses a method for controlling volume in a communication device, comprising: Detecting a change in manual volume setting (Figure 2, at step 50); Measuring current background audio level (Figure 2 at step 32); Determining a relationship between the current background audio level and the volume setting (Figure 2; column 3, lines 19-64); Establishing the relationship as a desired volume level to be maintained (Figure 2; column 3, lines 19-64); Sensing a subsequent change in the manual volume setting (Figure 2 at step 50); Monitoring subsequent background audio level by engaging a microphone of the communication device in response to the subsequent change in the manual volume setting (column 3, lines 19-64; column 4, lines 1-28 and lines 43-55); Comparing the current background level to the subsequent background level; (Figure 2 at step 44; column 4, lines 1-35) Determining whether a change in background level occurred (Figure 2 at step 46; column 4, lines 30-33); and Automatically adjusting volume of a speaker based on the relationship (column 4, lines 1-58; Figure 2). Prior art Cooper (US 5,790,671) discloses selectively engaging a microphone column 4, lines 21-32).

Regarding claim 1 the prior art or combination thereof fails to disclose or make obvious monitoring subsequent background audio level by engaging a microphone of the two-way radio only when the subsequent change in the manual volume setting is detected.

Regarding claim 2, the prior art or combination thereof fails to disclose or make obvious monitoring subsequent background audio levels by engaging a microphone only when a change in manual volume control setting occurs.

Regarding claim 3, the prior art or combination thereof fails to disclose or make obvious a microphone coupled to the controller for monitoring background noise levels only when changes in the manual volume control are detected.

Regarding claim 5, the prior art or combination thereof fails to disclose or make obvious said AVC engaging the microphone to sample subsequent background audio levels only when a subsequent change to the manual volume control is sensed by the intelligent AVC.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVONA E. FAULK whose telephone number is (571)272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Devona E. Faulk/
Examiner, Art Unit 2615**

**/Vivian Chin/
Supervisory Patent Examiner, Art Unit 2615**